

Rockspring Development, Inc. and United Mine Workers of America, Petitioner. Case 9–RC–17844

November 15, 2006

ORDER REMANDING PROCEEDING

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER
AND KIRSANOW

On February 3, 2004, Hearing Officer Donald A. Becher issued a report on challenged ballots and recommendations to the National Labor Relations Board in this proceeding. The Employer filed exceptions, the Petitioner filed exceptions and a supporting brief, and each filed an answering brief.

On September 29, 2006, the Board issued a Decision, Direction, and Order in this proceeding, adopting the hearing officer's recommendations in certain respects, and directing the Regional Director to open and count certain ballots and to prepare a revised tally of ballots. The Board further directed the Regional Director to transfer this proceeding back to the Board if the challenged ballots of Ernest Bartram, Charles Stollings, Andrew Jackson Sharp, and Bobby Lee Stowers remained determinative. On October 12, 2006, the Regional Director, having found that these ballots remained determinative, transferred this proceeding back to the Board for further consideration.¹

On September 29, 2006, the Board issued its decisions in *Oakwood Healthcare*, 348 NLRB 685, *Croft Metals*,

¹ The revised tally of ballots shows 110 for and 108 against the Petitioner, with 4 challenged ballots, a number sufficient to affect the results.

Inc., 348 NLRB 716, and *Golden Crest Healthcare Center*, 348 NLRB 712, in light of the Supreme Court's decision in *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001). *Oakwood Healthcare*, *Croft Metals*, and *Golden Crest* specifically address the meaning of "assign," "responsibly to direct," and "independent judgment," as those terms are used in Section 2(11) of the Act.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has decided to remand this case to the hearing officer for further consideration in light of *Oakwood Healthcare*, *Croft Metals*, and *Golden Crest*, including allowing the parties to file briefs on the issue,² and, if warranted, reopening the record to obtain evidence relevant to deciding the case under the *Oakwood Healthcare*, *Croft Metals*, and *Golden Crest* framework.

IT IS ORDERED that this proceeding is remanded to the hearing officer for appropriate action as noted above.

IT IS FURTHER ORDERED that the hearing officer shall prepare a supplemental report on challenged ballots setting forth recommendations to the Board, as appropriate on remand. Copies of the supplemental report shall be served on all parties, after which the provisions of Section 102.69 of the Board's Rules and Regulations shall be applicable.

² On October 17, 2006, the Employer filed a Motion to Permit Re-Briefing. On October 24, 2006, the Petitioner filed an opposition. Because our remand provides an opportunity for further briefing, the Employer's motion is denied as moot.